IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7428 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

BALDEVSINH AJITSINH ZALA

Appearance:

1. Special Civil Application No. 7428 of 2004

MR HS MUNSHAW for Petitioner No. 1

MR VM DHOTRE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 23/08/2004

ORAL JUDGEMENT

Rule. Learned advocate Shri V.M.Dhotre waives service of notice of rule on behalf of the respondent. At the request of the learned advocates appearing for the

parties, the petition is heard for final disposal today.

2. In the present petition, the petitioner has challenged the order dated 2.4.04 passed by the Industrial Tribunal, Ahmedabad below Ex.2 in Complaint (IT) No.297/03.

3. The short facts leading to the present petition are that the respondent-workman while working as a Driver with the petitioner, Ahmedabad Municipal Transport Service, is alleged to have had an altercation with one Dahyabhai Haridas Patel who was working as a Conductor with the petitioner Corporation on 9.9.02. Said Shri Dahyabhai Patel, therefore, filed a criminal complaint against the respondent alleging offences punishable under section 325, 323 and 427 of the Indian Penal Code. It is also the case of the petitioner that due to the assault by the respondent on Dahyabhai Patel, said Shri Dahyabhai received physical injuries and had to be hospitalised.

4. While the said criminal complaint was being investigated by the Police and chargesheet was being filed before the criminal court, the petitioner Corporation issued a departmental chargesheet dated 8.11.02 against the respondent in which it is alleged that on 9.9.02, the respondent was assigned the duty of route No.130, bus No.614 in the first shift. Shri Dahyabhai Patel was assigned route No.130, bus No.523 also in the first shift. When said Shri Dahyabhai after completion of his duty and after depositing the fare collected by him in the cash cabin at Hatkeshwar Depot had taken out his bicycle from the stand and when he was preparing to leave to go home, the respondent had also completed his duties and had come to Hatkeshwar Depot with his bus and after parking his bus had come near him (Dahyabhai) and told him about certain report published in a newspaper and made certain remarks about the women of his community. Shri Dahyabhai had, therefore, told him not to make general comments against the community, upon which the respondent had started shouting and had got excited and assaulted him. He had given two to three slaps to Shri Dahyabhai. In the ensuing scuffle Shri Dahyabhai's shirt as well as pocket was torn off and a cash of Rs.1700/= was found missing. To separate them, some of the staff members had intervened. It is further alleged that on account of assault by the respondent, Shri Dahyabhai had received fracture in two fingers for which he had to take treatment in the LG Hospital. It is alleged that in the past also, the respondent had beaten up other staff members. It was, therefore, alleged that the respondent had committed misconduct by assaulting a

co-employee and had used vulgar language, intimidated him and had also acted in arrogant manner. It was, therefore, alleged that he had committed misconduct as defined in clause 25(a), (b), (m) and (u) of the Standing Orders.

5. Upon receipt of the said chargesheet, the respondent workman filed Complaint (IT) No.297/03 before the Industrial Tribunal in pending reference Nos.137/01 and 140/03. In the said complaint, the respondent also filed application Ex.2 seeking interim injunction to the effect that till the final outcome in his compliant or till the outcome of the criminal case pending against him, the department should stay the proceedings of the departmental inquiry initiated pursuant to the said chargesheet dated 8.11.02.

6. By the order dated 2.4.04 passed below Ex.2 in Complaint (IT) No.297/03, the Industrial Tribunal, Ahmedabad was pleased to direct that the employer i.e. the petitioner would be entitled to continue with the Departmental Inquiry against the respondent workman, but till the outcome of the criminal proceedings and without taking into account the decision therein and without permission of the Court, the employer shall not be entitled to pass any order against the respondent workman. It is this order dated 2.4.04 which has been challenged by the petitioner in the present petition, as mentioned above.

7. The learned advocate Shri H.S.Munshaw appearing for the petitioner has submitted that the Industrial Tribunal has gravely erred in law in directing that the petitioner shall not pass any final orders in the departmental inquiry till the outcome of the criminal case is known. He has also submitted that the charge in the criminal case as well as in the departmental inquiry being simple in nature, it is not necessary or desirable to stay the departmental proceedings till the final outcome of the criminal case. He has submitted that the respondent had in the past also similarly assaulted other co-workers and that, therefore, it is not desirable to stay the departmental proceedings for unlimited period. He, however concedes that in view of the pending reference and in view of the provisions of section 33(2)(b) of the Industrial Disputes Act, if the petitioner decides to dismiss or discharge the respondent pursuant to the departmental proceedings, it would be necessary to seek approval from the concerned Industrial Tribunal.

8. On the other hand, learned advocate Shri V.M.Dhotre appearing for the respondent-workman has supported the impugned order dated 2.4.04. He submits that the safeguards provided by the Industrial Tribunal in the impugned order are just and call for no interference. It is the contention of the learned advocate Shri Dhotre that the criminal case as well as the departmental proceedings initiated against the respondent-workman are based on identical set of facts and that therefore, it is necessary in the interest of justice to stay the departmental proceedings till the final outcome in the criminal case. He submits that in view of pendency of reference (IT) Nos.137/01 and 140/03, the respondent cannot be dismissed from service without seeking permission of the Industrial Tribunal.

9. Learned advocate Shri Dhotre has also submitted that the allegations contained in the chargesheet even if taken on the face value do not constitute misconduct. It is his case that the term "misconduct" has been defined in standing order 25 in the Certified Standing Orders promulgated by the petitioner Corporation. He points out that in the chargesheet itself, it is alleged that by his conduct, the respondent has committed misconduct as defined in standing order 25 (a), (b), (m) and (u) of the Standing Orders. He submits that ex facie, the act alleged to have been committed by the workman cannot be covered under clause (a), (b) or (m) of Standing Order 25 of the Standing Orders. He further submits that on correct interpretation of clause (u) of Order 25, the only conclusion possible is that the allegations levelled against the respondent workmen would not amount to misconduct under the said clause also.

10. In view of the controversy and the rival contentions, following three questions arise for determination in the present petition:

(i) Whether the Industrial Tribunal was justified in directing that though the departmental inquiry may proceed, the final order thereon should not be passed till the outcome in the criminal proceedings and without taking into account the orders passed therein.

(ii) Whether the Industrial Tribunal was justified in directing that no final order in the departmental proceedings against the respondent be passed without the permission of the Tribunal.

(iii) Whether the allegations levelled against the

respondent in the chargesheet dated 8.11.02 even if taken on face value do not constitute misconduct as contended by the learned advocate for the respondent.

11. With respect to first question, it can be noted at the outset that there is no dispute about the fact that the charges levelled against the respondent-workman in the departmental chargesheet dated 8.11.02 are similar and based on the same set of facts as contained in the criminal case against him initiated vide complaint dated 9.9.02 filed by Shri Dahyabhai Patel. Though neither the criminal complaint filed on 9.9.02 by Shri Dahyabhai Patel nor the chargesheet issued in the said criminal case are produced on record of the present petition, there is no dispute raised by either parties that the background facts leading to the departmental chargesheet dated 8.11.02 and filing of the criminal case against the respondent are based on identical set of facts. The question, however, that is required to be considered in the present petition is whether in the facts of the present case, it is necessary or desirable to stay passing of the final order in the departmental proceedings against the respondent till the final outcome of the criminal case.

12. The law on the question of proceeding simultaneously against an employee departmentally when a criminal case based on same set of facts is pending in a criminal court is by now well settled. In the decision reported in AIR 1988 SC 2118 (Kusheshwar v. M/s.Bharat Coking Coal Ltd.), the Hon'ble Supreme Court observed that while there could be no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In para 6 of the said decision, following observations have been made:

"6. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial

consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

13. The issue has been considered by the Hon'ble Supreme Court many times thereafter also. In a decision reported in AIR 1997 SC 13 (State of Rajasthan v. B.K.Meena) the Hon'ble Supreme Court considered all earlier decisions on the point and observed that staying of disciplinary proceedings is a matter to be determined having regard to the facts and circumstances of a given case. The Hon'ble Supreme Court further observed that the approach and objective in the criminal proceedings and disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings should not be a matter of course. It will be useful to reproduce some of the observations made by the Hon'ble Supreme Court in the said decision:

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and no hard and fast rules can be enunciated

in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced". This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave, but that the case must involve complicated questions of law and fact. Moreover, 'advisability' 'desirability' or 'propriety' as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. (AIR 1960 SC 806) and Tata Oil Mills (AIR 1965 SC 155) is not also an invariable rule. It is only a factor which will go in the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is inquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent official also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that

persons accused of serious misdemeanor should be continued in office indefinitely, that is for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and decision taken keeping in view the various principles laid down in the decisions referred to above.

15. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are levelled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.

xxxxxxx
xxxxxxx

17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings

pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

14. A similar issue once again came up before the Hon'ble Supreme Court and it was decided in the decision reported in AIR 1997 SC 2232 (Depot Manager, A.P.S.R.T. Corpn. V. Mohd. Yousuf Miya). Relying on the case of B.K. Meena (supra), the Hon'ble Supreme Court observed that there would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Following observations of the Hon'ble Supreme Court in para 6 can be noted :

..... We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to law down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted, it should be in accordance with proof of the offence as per the evidence defined under the provisions of Evidence Act. Converse is the case of departmental enquiry. The enquiry in a

> departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, the prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence is also different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

15. In yet another decision of the Hon'ble Supreme Court reported in AIR 1999 SC 1416 (M. Paul Anthony v. Bharat Gold Mines Ltd.), the above decisions came up for consideration and after examining the law on the point, the Hon'ble Supreme Court noted the conclusion which are deducible from various decisions on the point and observed as follows:

> "22. The conclusions which are deducible from various decisions of this Court referred to above are:
>
> (i) Departmental proceedings and proceedings

in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the chargesheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

16. From the above decisions of the Hon'ble Supreme Court, it can be seen that departmental proceedings and criminal case can proceed simultaneously against an employee and that there is no bar for the same being conducted simultaneously. It would be desirable to stay the departmental proceedings till the conclusion of the criminal case if the charge in the criminal case against the delinquent employee is of grave nature involving complicated questions of law and fact. Even in such cases, the situation cannot be considered in isolation to stay the departmental proceedings and due regard has to be given to the fact that the departmental proceedings

cannot be unduly delayed.

17. Applying the above principles to the facts of the present case, it can be seen that the charge against the respondent herein is that on 9.9.02 he had heated exchange of words with a fellow employee Shri Dahyabhai Patel in the premises of the petitioner-Corporation at Hatkeshwar Depot of the petitioner Corporation and the respondent assaulted the said Shri Dahyabhai Patel, caused him bodily injuries which resulted into two fractures on his fingers for which he had to receive treatment in the LG Hospital. It is also alleged that in the past also, the respondent had assaulted other employees. By no stretch of imagination, the charge levelled against the respondent can be stated to be one involving complicated questions of law and facts. The outcome in the criminal cases often take a long time. The departmental proceedings cannot be stayed until the criminal case against the employees is over unless it is shown that besides the departmental proceedings as well as the criminal case being based on identical set of facts, the charge is of grave nature which involves complicated questions of law and facts. I therefore do not find any justification to restrain the petitioner from concluding the departmental inquiry and passing appropriate final order till the outcome of the criminal case. The insistence of the Industrial Tribunal that the employer should wait for the outcome in the criminal case and should take into account the final result in the criminal proceedings is also unjustified. As held by the Hon'ble Supreme Court in the above mentioned cases, it is desirable that the departmental inquiry against the employee is conducted and concluded as expeditiously as possible. If the charge against the employee is sustained, it is desirable that appropriate penalty is imposed as early as possible. On the other hand, if the employee is innocent, it is equally necessary that proceedings against him should be concluded early so that he could receive the full benefits of such a verdict. It is also by now well settled that the nature of proof required in a criminal case is entirely different from that required in departmental proceedings. The departmental inquiry is not a criminal trial and the standard of proof required is that of preponderance of probability and not proof beyond doubt as in criminal cases. The Industrial Tribunal, therefore, in my view, was not justified in directing that the petitioner should await the outcome in the criminal case pending against the respondent before passing the final order in the departmental proceedings initiated against the respondent vide chargesheet dated 8.11.02. I am also unable to

agree with the contention of the learned advocate for the respondent that the charge against the respondent is grave and that therefore it is desirable that the departmental proceedings are not concluded till his decision in the criminal case is known. The requirement as discussed above is not only that of the charge being of a grave nature, it is also further required, to stay the departmental proceedings that the issues involve complicated questions of law and facts. Even if, therefore, I were to agree with the suggestion of Shri Dhotre that the charge is of grave one, in view of the fact that I do not find that the allegation against the respondent involve complicated questions of law and fact, I find that the Industrial Tribunal had erred in law in directing that the final order in the departmental proceedings should not be passed till the criminal case against the respondent is decided.

18. Considering the various decisions of the Hon'ble Supreme Court, this Court had also decided a similar matter being Special Civil Application No.7319 of 2004 on 13.7.2004 wherein also the order of the Industrial Tribunal staying the final order in the departmental proceedings till the conclusion of the criminal case was challenged by the employer. The said decision, as stated by the learned counsel Mr.Dhotre was carried in appeal being Letters Patent Appeal No.1502 of 2004 and the appeal came to be rejected on 6.8.04.

19. Learned advocate Shri Dhotre has also submitted that even as per regulation 16.6.5 of the Service Regulations formulated by the petitioner, it is necessary that the departmental proceedings should be stayed till the final outcome in the criminal case is known. It is submitted that the regulation itself provides that in a situation as the one in present case, the departmental proceedings could not be completed till the conclusion of the criminal case. He particularly relies on the Note under regulation 16.6.5. The Note under regulation 16.6.5 reads as under :

> "Note: The proceedings referred to in this regulation are departmental proceedings. Delay in deciding departmental proceedings against an A.M.T.S. servant under suspension entails expenditure to A.M.T.S. on payment of subsistence allowance to such A.M.T.S. servant. It is therefore necessary to ensure that departmental proceedings against A.M.T.S. servant should save in cases referred to in the succeeding sentence be concluded as soon as

possible after the case against him is decided in the first court. In cases where a A.M.T.S. servant is convicted by a competent court and sentenced to imprisonment department proceedings against him should not however be completed till the result of an appeal, if any to a higher court is known."

He also draws my attention to regulations 16.4 and 16.5 and submits that detailed procedure as laid down in regulation 16.4 is to be followed before inflicting penalty for any misconduct except in the exceptions provided in regulation 16.5. He, therefore, submits that the Note under regulation 16.6.5 would apply in a case where the departmental inquiry and criminal proceedings are pending. I am unable to accept the contention of the learned advocate for the respondent. In my view, no such reading of the said regulation is called for. The Note to the said regulation only provides that in cases where AMTS servant is convicted by a competent court and sentenced to imprisonment, departmental proceedings against him should not be completed till the result of the appeal is known. In my view, the said provision applies to an entirely different situation where the Corporation is seeking to rely upon conviction of an employee in a criminal case to pass order of penalty based only on such a conviction without holding a full-fledged departmental inquiry. In such a situation, it is provided that the final order in the departmental inquiry should not be passed till the appeal, if any, filed by the employee is disposed of. This regulation, therefore, cannot be applied to the facts of the present case since the petitioner is seeking to conduct a full-fledged inquiry independent of the criminal case.

20. In view of the above discussion, I conclude that the Industrial Tribunal was not justified in directing that though the departmental inquiry may proceed, final order thereon should not be passed till the outcome in the criminal proceedings and without taking into account the orders passed therein. The question No.1 is decided accordingly.

21. With respect to second question, I have already noted the concession of the learned advocate for the petitioner that in view of the pendency of references Nos.(IT) 137/01 and 140/03, the petitioner shall seek proper approval of the Industrial Tribunal concerned in terms of section 33(2)(b) of the Industrial Disputes Act. Nothing has been pointed out by the learned advocate for the respondent to suggest that the pending references are

connected with the departmental proceedings initiated by chargesheet dated 8.11.02. In fact, it is not even his case that the departmental action being taken against the respondent is in connection with any of the issues pending before the Industrial Tribunal in the above mentioned references. In view of this position, there is no necessity to obtain prior permission of the Industrial Tribunal before passing final order in the departmental proceedings initiated before the respondent.

22. In view of the earlier discussion and the conclusion to the effect that the departmental proceedings are not required to be stayed till the outcome of the criminal case against the respondent and in view of the finding that no permission is required to be taken under section 33(1)(a) of the Industrial Disputes At, I find that the Industrial Tribunal had erred in law in directing that no final order be passed in the departmental proceedings without the permission of the Tribunal and the question No.2 is decided accordingly.

23. With respect to question No.3, one may note at the outset that though the impugned order of the Industrial Tribunal dated 2.4.04 is not based on the ground that the allegations contained in the chargesheet do not amount to misconduct, I find that the respondent had specifically taken such a contention in his application for interim relief, Ex.2. I have, therefore, permitted the respondent to agitate the said question since the same does not involve any disputed question of facts.

24. In support of his contention that the allegations in the chargesheet do not amount to misconduct, learned advocate Shri Dhotre has invited my attention to various clauses of Order 25 of the Standing Orders wherein the term "misconduct" has been defined. As recorded earlier, in the chargesheet issued against the respondent, it is alleged that the respondent has committed misconduct as defined in Standing Order 25(a), (b), (m) and (u). The said clauses can, therefore, be reproduced here:

"25. The following acts and omissions on the part of the workman shall amount to misconduct:-

(a) Wilful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior.

(b) Going on an illegal strike or abetting, inciting, instigating or acting in furtherance thereof;

xxxxx
xxxxx

(m) Commission of any act subversive of discipline or good behaviour on the premises of the establishment or while on duty;

xxxxx
xxxxx

(u) Assault on or intimidation of superior officer or officers or fellow employee or employees of the establishment, or while on duty or wearing the undertaking's uniform, assaulting or intimidating, or being deliberately discourteous to the undertaking's passengers or intending passengers

25. A bare reading of clauses (a), (b) and (m) of Order 25 of the said Standing Orders would make it clear that the allegations against the respondent would not be covered in any of the said clauses. The question, however, is whether the respondent could have been said to have committed misconduct under Order 25(u) of the Standing Orders.

26. In the said clause, it is provided that assault on or intimidation of superior officer or officers or fellow employee or employees of the establishment amounts to misconduct. It is provided that if an employee while on duty or wearing the undertaking's uniform assaults or intimidates or is deliberately discourteous to the undertaking's passengers or intending passengers, such an action would amount to misconduct. The said provision can be bifurcated in two parts. Any assault or intimidation of superior officer or officers or fellow employee or employees of the establishment amounts to misconduct. Whereas the act of assaulting or intimidating or being deliberately discourteous to the undertaking's passengers or intending passengers would amount to misconduct under the said clause only if the act is committed by the employee while on duty or wearing undertaking's uniform. The learned advocate Shri Dhotre has strenuously urged before me that the alleged quarrel between the respondent and Shri Dahyabhai Patel ensued

shortly after both of them had finished their duties. In fact, the respondent had allegedly assaulted Shri Dahyabhai Patel in the premises of the Corporation at Hatkeshwar depot itself. If this is the case, I am unable to agree with the contention of the learned advocate Shri Dhotre that the alleged action of the respondent is not covered by the definition of the term misconduct under Order 25(u) of the Standing Orders. As discussed earlier, the requirement that the employee should be on duty or wearing the undertaking's uniform so that his action amounts to misconduct is with respect to latter portion of the definition where the same pertains to assaulting or intimidating or being discourteous to the passengers or intending passengers. Such a requirement cannot be read into the first portion of the definition where mere assault or intimidation of superior officer or officers or fellow employee or employees of the establishment would amount to misconduct. One also finds that under Standing Order 25(l), commission of any act subversive of discipline or good behaviour on the premises of the establishment or while on duty shall also amount to misconduct. The incident had allegedly taken place in the premises of the petitioner and the charge if proved, would surely be an act which is subversive of discipline and good behaviour.

27. Learned advocate Shri Dhotre has placed reliance on a decision of the Hon'ble Supreme Court in the case of Glaxo Laboratories (I) Ltd. v. Labour Court, Meerut, & ors., reported in 1984-I LLJ 16 wherein it is held that there would be various acts of misconduct for the purpose of Service Rules if committed within the premises of the establishment or in the vicinity thereof, but such acts would not constitute misconduct per-se notwithstanding where and when they are committed. In the said decision, it has been observed by the Hon'ble Supreme Court that the employer is entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within the premises where the workmen gather together for rendering service. The employer has both power and jurisdiction to regulate the behaviour of workmen within the premises of the establishment, or for peacefully carrying the industrial activity in the vicinity of the establishment. In the facts of the present case, it can be seen that the respondent is alleged to have assaulted and severely beaten up a fellow employee within the premises of the Hatkeshwar Depot. The ratio of the above decision, therefore, would not further the case of the respondent.

28. The learned advocate Shri Dhotre has submitted

that the decision of the Hon'ble Supreme Court in Glaxo Laboratories (supra) has been followed in a later decision of the Hon'ble Supreme Court in the case of Rasiklal v. Ahmedabad Municipal Corporation, reported in AIR 1985 SC 504. In the said decision, it was found that the alleged misconduct was not falling within the misconducts enumerated in the Service Regulations or Standing Orders and that therefore it was held that it was not open for the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconducts. In my opinion, since the allegations against the respondent are covered under clause (u) of Standing Order 25 defining misconduct, the ratio laid down by the said decision is not applicable to the present case.

29. The learned counsel Shri Dhotre has also placed reliance on the decision in the case of N.H.Lamani v. Central Government, Ministry for Railways, New Delhi & ors., 1993-II CLR 334. In the said decision rendered by the Andhra Pradesh High Court, it was held that rule 147(xii) of the Railway Protection Force Rules, 1987 covers acts committed while on duty and within office premises and the petitioners were removed from service for incidents which took place outside duty hours and outside office premises and which had no nexus with the nature of work. It was found that the authorities have no jurisdiction to enquire into such acts. In view of the fact that in the instant case, the incident is alleged to have taken place inside the premises of the petitioner, the ratio of the said decision would not apply in the present case.

30. The learned advocate for the petitioner placing reliance on a decision of the Bombay High Court in the case of P.V.Pujari and others v. Municipal Corporation of Greater Bombay & anr., reported in 1995(6) SLR 552 has argued that Standing Order 20(r) in the said case is similarly worded as that of Standing Order 25(u) in the present case and that in the said decision, Standing Order 20(r) was interpreted and it was held that it applies only to superior officer or officers or fellow employee or employees and it does not apply to all officers or all employees of the undertaking and the expression "fellow employee" cannot be extended to take within its sweep all employees of the undertaking. In the above mentioned case, however, it was found that one bus conductor serving with the BEST Undertaking of the Corporation assaulted another bus conductor outside the premises of the Corporation and none of them was on duty

or in uniform including the conductor assaulted. On the basis of the above interpretation of Order 20(r), the Bombay High Court was of the opinion that the employee had not committed misconduct as defined under the Standing Orders. It is not necessary for me to interpret Standing Order 25(u) in the context of the fact situation obtaining in the above decision of the Bombay High Court as it would be hypothetical and an academic exercise. The facts of both the cases are vastly different. In the case decided by the Bombay High Court, a conductor had assaulted another conductor outside the premises of the Corporation and none of them were on duty or in uniform. In the present case, the respondent had alleged to have assaulted a fellow bus conductor inside the premises of the Corporation and the ratio laid down in the said decision, therefore, obviously would not apply to the facts of the present case. In fact, in the decision of the Hon'ble Supreme Court in Glaxo Laboratories (supra), it was observed that the employer is entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within the premises where the workmen gather together for rendering services and the employer has the power to regulate the behaviour of the workmen within the premises of the establishment and even for peacefully carrying the industrial activity in the vicinity of the establishment. In the present case, when serious allegations of assault are levelled against the respondent in the very premises of the Corporation, none of the decisions cited by the learned advocate for the respondent would be helpful to the respondent in establishing that the allegations even if established would not amount to misconduct as defined under the Standing Orders. Question No.3 is, therefore, accordingly answered holding that the allegations levelled against the respondent, if proved, would be well covered under the definition of the term "misconduct" as found in Standing Order 25(u).

31. In the result, the petition succeeds. The impugned order dated 2.4.04 of the Industrial Tribunal is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

32. At this stage, learned advocate for the respondent requests that this order may be stayed for a reasonable period to permit the respondent to appeal against the same. The request is granted. This order is suspended till 10th September, 2004.

(Akil Kureshi, J.)
(vjn)